TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~485~~ 245 48

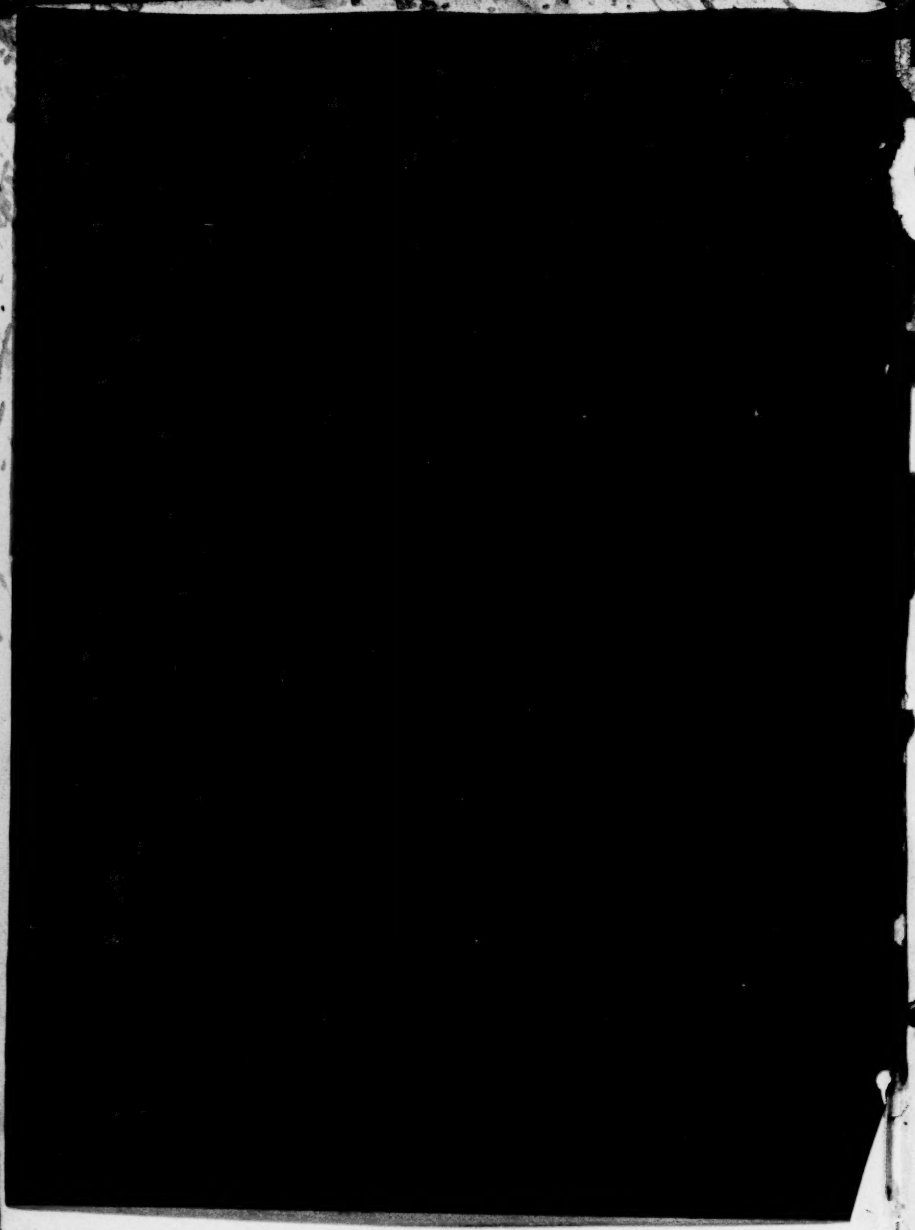
JOHN E. KNODE, PLAINTIFF IN ERROR,

vs.

JACOB WILLIAMSON.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

FILED DECEMBER 6, 1871.



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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judge of the district court of the United States for the district of West Virginia, greeting:

[SEAL.]

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court, before you, between John E. Knode, plaintiff, and Jacob Williamson, defendant, a manifest error hath happened to the great damage of the

2 said plaintiff, as by his complaint appears: We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and seventy-one.

D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

Allowed by—

S. P. CHASE, *Ch. Jus.*

(Indorsed:) U. S. Supreme Court. John E. Knode vs. Jacob Williamson. Writ of error.

3 The United States of America to Jacob Williamson, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the district of West Virginia, wherein John E. Knode is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this fifteenth day of November, in the year of our Lord one thousand eight hundred and seventy-one.

S. P. CHASE, *Ch. Jus.*

4 We hereby acknowledge service of the enclosed notice, Nov'r 21, 1871.

CHA'S J. FAULKNER,
Counsel for Def't in Error.

5 Know all men by these presents that we, John E. Knode and Benjamin Stanton, are held and firmly bound unto Jacob Williamson, in the full and just sum of two hundred dollars, to be paid to the

said Jacob Williamson, his executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this day of November, in the year of our Lord one thousand eight hundred and seventy-one.

Whereas, lately, at a term of the district court of the United States for the district of West Virginia, held at the city of Wheeling, in a suit depending in said court, between the said John E. Knode, as plaintiff, and the said Jacob Williamson, as defendant, a final judgment was rendered against the said John E. Knode, and the said John E. Knode having obtained and prosecuted a writ of error to the Supreme Court of the United States to reverse the said judgment rendered in the above-named suit by the district court of the United States for the State of West Virginia:

Now, therefore, the condition of this obligation is such that if the above-bound John E. Knode shall prosecute his said writ of error to effect, and answer all costs if he shall fail to make his plea good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

——— ———. [L. S]
(S'g'd) B. STANTON. [L. S.]
——— ———. [L. S.]

Sealed and delivered in presence of—

——— ———.

Approved by—
(S'g'd) S. P. CHASE, *Ch. Jus.*

6 To the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the U. States:

The petition of John E. Knode, a citizen of the State of Maryland, represents and shows unto your honor that, in a certain cause lately pending in the district court of the United States, (having circuit court powers,) for the district of West Va., in the fourth judicial circuit of the United States, wherein he, the said John E. Knode, was plaintiff, and Jacob Williamson, of the State of West Virginia, was defendant, error has intervened to the prejudice of the plaintiff, in this, to wit:

1st. That the court erred in ruling out and excluding from the jury the deposition of the Hon. Joseph A. Chapline, as shown by the plaintiff's bill of exceptions.

2nd. That the court erred in overruling the plaintiff's objection to the deposition of Scott S. Ellis, and in permitting the same to be read in evidence to the jury.

3rd. The court erred in sustaining the several objections of the defendant to the depositions of William N. Riddle, John W. Pitzer, John Jamison, George Ramer, John E. Schley, and George Colbert, and in refusing to permit each of said depositions to be read in
7 evidence to the jury.

4th. Because the court erred in refusing to set aside the verdict rendered in said cause and grant the plaintiff a new trial; for the reason that the court erred in its rulings in the exclusion of the deposition of the said Joseph A. Chapline, William N. Riddle, John Jamison, John W. Pitzer, George Ramer, John E. Schley, and George C'lbert, and in the admission of the deposition of Scott S. Ellis, as set forth in the plaintiff's reasons for a new trial and in his bill exceptions.

And the plaintiff herewith submits a duly certified copy of the record

of said cause, and prays a writ of error to said court, and that said judgment may be reviewed and reversed by the Supreme Court of the United States, and that he may be restored to all that he has lost thereby.

B. STANTON,
Att'y for Plaintiff.

8 Record of proceedings in the case of John E. Knode vs. Jacob Williamson, now pending in the district court of the United States for the district of West Virginia, at Wheeling, W. Va.

9 UNITED STATES OF AMERICA,
District of West Virginia:

Pleas and proceedings before the district court of the United States for the district of West Virginia, commencing on the 27th day of September, 1867.

Be it remembered that, heretofore, to wit, on the 27th day of September, 1867, came John E. Knode, a citizen and resident of the State of Maryland, and, by his attorneys, sued out of the office of the said court a writ of summons in debt; which writ, with the return thereon, is in the words and figures following:

10 The President of the United States of America to the marshal of the district of West Virginia:

You are hereby commanded to summon Jacob Williamson, a citizen & resident of the State of West Virginia, and of the judicial district thereof, if he be found in your district, to appear before the judge of the district court of the United States, for the district of West Virginia, at Wheeling, at rules to be held in the clerk's office of our said court, on the first Monday in October next, to answer John E. Knode, a citizen & resident of the State of Maryland, of a plea of trespass—damages, $10,000; & have then there this writ.

Witness the Hon. John J. Jackson, jr., judge of the district court of the United States for the district of West Virginia, at Wheeling, this 27th day of September, A. D. 1867, and in the 92nd year of the independence of the United States of America.

JASPER Y. MOORE,
Clerk U. S. D. C., D. W. Va.

11 This summons is endorsed as follows:

"Suit brought to recover ten thousand dollars damages, for taking and carrying away & destroying a canal-boat & cargo, the property of the plaintiff, of the value, $8,000." D. C. U. S., D. W. Va. John E. Knode vs. Jacob Williamson. Summons in trespass.

I executed this writ by reading and delivering a true copy hereof to the within-named Jacob Williamson, on the third day of October, 1871.

E. M. NORTON,
U. S. Marshal D. W. Va.
By L. A. LUCE,
Deputy Marshal.

Mileage, 2.00; 16.92—18.92.
Stanton & Allison.

12 UNITED STATES OF AMERICA,
District of West Virginia:

In the district court, with circuit court powers, when sitting at Wheeling.

JOHN E. KNODE
vs.
JACOB WILLIAMSON. } In trespass. November rules, 1867.

John E. Knode, a citizen of the State of Maryland, complains of Jacob Williamson, a citizen of the State of West Virginia, who was summoned to answer unto the said John E. Knode, in a plea of trespass, for that heretofore, to wit, on the 17th day of April, 1862, the said John E. Knode was the owner and was in possession of a certain canal-boat called the "Elen Reutch," which said canal-boat was then & there in the Potomac River, at Harrison's landing, in Berkeley County, in the then State of Virginia, but now in the State of West Virginia, and was then & there fastened to the Virginia shore, at said landing, by her cable, and which said boat was then & there loaded with a cargo of wheat, and flour, and corn, & oats, said cargo then and there consisting of four thousand bushels of wheat of the value of six thousand dollars;
13 one hundred barrels of flour, of the value of fifteen hundred dollars; one hundred bushels of corn, of the value of one hundred dollars; and one hundred bushels of oats, of the value of fifty dollars.

And the plaintiff further avers that the said canal-boat, with her fixtures, and furniture, were of the value of two thousand dollars.

And the plaintiff further avers that, being the owner & in possesion of the said boat & cargo as aforesaid, the defendant, with divers other wicked & evil-disposed persons, to the plaintiff unknown, then & there, with force and arms, entered said boat, & cut her cable, & broke her fastenings, and then & there shoved, & pushed, & floated said boat, with her cargo, into the current & channel of the said Potomac River, by means whereof the said boat & cargo were floated, & carried down said river to and over canal-dam No. 4, whereby said boat & cargo were wrecked, and destroyed, and wholly lost to the plaintiff.

14 And also for that the said defendant heretofore, to wit, on the 18th day of April, A. D. 1862, at the district aforesaid, with force and arms, took & carried away a certain canal-boat of the plaintiff, then & there laden with a cargo of wheat, & flour, corn, & oats, of the value of ten thousand dollars, of the goods, & chattels, & property of the plaintiff, & then & there converted the same to his own use, & wholly destroyed the same, by means whereof the said boat & cargo were wholly lost to the plaintiff, to the plaintiff's damage ten thousand dollars; &, therefore, he brings suit.

STANTON & ALLISON,
Attorneys for Plff.

15 JOHN E. KNODE, A CITIZEN & RESIDENT of the State of Maryland,
vs.
JACOB WILLIAMSON, A CITIZEN & RESIDENT OF the State of West Virginia. } In trespass.

FRIDAY, *January 8th*, 1869.

This day came the parties, by their attorneys, and, on motion of the defendant, by his attorney, it is ordered, that the judgment & writ of enquiry, entered in the office in this cause, is set aside; and thereupon

the defendant, by his attorney, demurs generally to the plaintiffs declaration in this cause, and the plaintiff joins in the said demurrer; and the matters of law arising upon said demurrer being argued by counsel, it is considered by the court that the same be overruled; and the plaintiff, for plea, saith that he is not guilty of the trespasses in manner and form as the plaintiff, in his declaration against him alleged; and of this he puts himself upon the country, and the plaintiff doth the like; and thereupon came a jury, to wit: Elza Lazier, William J. Robb, Hugh G. Crymble, Michael Edwards, j'r, John S. Burdett, Henry C.
16 Tucker, Henry B. Middleton, Hamilton Z. Shriver, John H. Tappan, Samuel K. Hornbrook, Henry G. Harding, and John Garcelon, all good & lawful men of this judicial district, who, being duly sworn to well and truly try the issues in this cause, and having partly heard the evidence, and it being too late to finish the trial of this cause, on this day, the jury are adjourned over until to-morrow morning, at ten o'clock.

17 FRIDAY, *January 15th*, 1869.

JOHN E. KNODE, A CITIZEN & RESIDENT OF the State of Maryland,
vs.
JACOB WILLIAMSON, A CITIZEN & RESIDENT OF the State of West Virginia.
} In trespass.

This day, came the parties, by their attorneys, and the jury impanelled & sworn in this cause, again appeared in court, according to their adjournment on yesterday, and having fully heard the evidence and argument of counsel, retired to their chamber to consider of their verdict, and after some time returned into court, and being unable to agree upon a verdict, John S. Burdett, one of the jurors aforesaid, was withdrawn, and the rest from rendering a verdict are discharged, and this cause is continued until the next term.

18 WEDNESDAY, *May 10th*, 1871.

JOHN E. KNODE
vs.
JACOB WILLIAMSON.
} In trespass.

This day came the parties, by their attorneys, and thereupon the plaintiff, by his attorney, replies generally to the two special pleas in writing heretofore tendered by the defendant, & issue is thereon joined, and thereupon came a jury, to wit: Philip Kuhn, Robert Dalzell, William Granum, Richard Blum, James M. Ferrel, Henry Schmulbach, James C. Allison, George C. Mendel, James A. McCauley, John D. Maxwell, John Slack, j'r, and Alexander Mitchell, all good and lawful men of this judicial district, who, being selected, tried, & sworn to well and truly try the issue in this cause, and having partly heard the evidence, & the same not being concluded, & it being too late to finish the trial of this cause, on this day, the jury are adjourned over until to-morrow morning, at 9 o'clock. Ordered that the court be adjourned until to-morrow morning, at 9 o'clock.

J. J. JACKSON, J'R.

19 WEDNESDAY, *May* 17*th*, 1871.

JOHN E. KNODE
vs.
JACOB WILLIAMSON. } In trespass.

This day came the parties, by their attorneys, and the jury impanelled & sworn in this cause, again appeared in court, according to their adjournment on yesterday, and, having fully heard the evidence & arguments of counsel, retired to their chamber to consider of their verdict; and after some time, returned into court, and upon their oaths do say, "We, the jury, find for the defendant."

And thereupon the plaintiff, by his attorney, moved the court to set aside the verdict of the jury in this cause, & grant him a new trial herein, for reasons here filed; which motion the court takes time to consider.

Ordered that the court be adjourned until to-morrow morning, at 9 o'clock.

J. J. JACKSON, J'R.

20 FRIDAY, *May* 26*th*, 1871.

JOHN E. KNODE
vs.
JACOB WILLIAMSON. } In trespass.

This day came the parties, by their attorneys, and the court having fully heard the arguments upon the motion to set aside the verdict of the jury in this cause, and grant him a new trial herein, heretofore entered in this cause, which motion, being heard, together with the arguments of counsel thereupon, is overruled. Therefore, it is considered by the court that the plaintiff take nothing by his declaration, and that the defendant recover against him his costs by him about his defence in this behalf expended therein.

On the trial of the above cause the plaintiff, by his attorney, excepted to an opinion of the court given therein, & tendered his bill of exceptions, which are in the words & figures following, to wit: "Be it remembered," &c., which are here signed, sealed, & ordered to be made a part of the record in this cause.

21 JOHN E. KNODE
vs.
JACOB WILLIAMSON.

Be it remembered that, upon the calling of this cause for trial, the defendant, by his counsel, stated to the court that there was a number of exceptions endorsed upon depositions, & other objections to be taken by the defendant, which went to the exclusion of the depositions filed by the plaintiff, which should be disposed of before the jury were sworn for the trial of this cause. To which the plaintiff, by his counsel, replied that he was anxious to have a speedy trial of the cause; and thereupon the case proceeded for trial; and the plaintiff, to maintain the issue upon his part, offered in evidence the deposition of Joseph A. Chapline, who departed this life the day of Sept., 1870, to which the defendant objected; and the plaintiff, for the purpose of sustaining said deposition,

submitted to the court the statement & deposition of George M.
22 Beltzhoover, and the affidavit of Benjamin Stanton, esq., which are here filed and made part hereof, and marked "B," "C," & "D;" and the defendant, with a view to exclude said deposition, offered the affidavit of H. H. Blackburn, esq., which is here filed & made part hereof, marked "E," and the objection, being referred to the court, was sustained. To the opinion of the court excluding said deposition the plaintiff excepts, &c.

The plaintiff then proved, by a witness who was present at a former trial of this cause, in this court, that the said Joseph A. Chapline was examined as a witness on a former trial of this cause, and that he heard & recollected the substance of his, the said Chapline's testimony, which the witness here detailed to the jury; and it also appeared, from an examination of the deposition of said Chapline, that he stated matters in it pertinent to the issue in this cause, which were not testified to by him on the former trial, & which were rebutting to the testimony of Jacob Williamson, the defendant in this cause.

23 And the plaintiff, having offered other & further evidence to support the issue in this cause, rested.

And the defendant, in support of the issue upon his part, offered in evidence the deposition of Scott S. Ellis, which is hereto attached & made part hereof, marked "F," which had been taken in a cause lately depending in the circuit court of Berkeley County, in the State of West Virginia, between the same parties, involving the same subject-matter as is in controversy in this suit, & that shortly after it had been so taken & filed in said cause, the plaintiff dismissed his suit there, and instituted his action in this court; and it appearing to the court that the said deposition was taken, according to the laws of this State, in that case, and that the defendant had made unusual efforts to ascertain the whereabouts of said Scott S. Ellis, in order that his deposition might be taken in this cause, & having failed therein, & said Scott S. Ellis not being a resident of this district, the court permitted the said dep-
24 osition to be read, overruling the objections thereto. To which opinion of the court, overruling said objection, the plaintiff excepts.

And the defendant, to further sustain the issue upon his part, called and examined Thomas Noaks as a witness, who gave material and important evidence for the defendant, & rested his case.

And the plaintiff, for the purpose of impeaching the character of said Thomas Knokes for truth & veracity, offered & proposed to read in evidence the depositions of William N. Riddle, John Jamieson, John W. Pitzer, & George Raymar, of Martinsburg, Berkeley County; and John E. Schley, of Jefferson County, West Virginia; & George Colbert, of Washington County, Maryland. To the reading of each and all of which the defendant objected; and the matter, being referred to the court, said objection was sustained, & each & all of said depositions were excluded, which are hereto attached & made part hereof, marked "G," "H," "I," "J," "K," & "L." To which opinion of the court
25 excluding said depositions the plaintiff excepts, and the case being submitted to the jury after argument, the jury returned a verdict for the defendant.

And thereupon the plaintiff moved the court to set aside the verdict of the jury, and grant him a new trial herein, for the reasons assigned in writing hereto attached and made part hereof, marked "X;" which motion the court overruled.

To which several opinions of the court the plaintiff, by his attorney,

excepts, and tenders this, his bill of exceptions, which he prays may be signed & sealed, and made part of the record of this cause.

J. J. JACKSON. [SEAL.]

26 *Notice.*

District court of the United States for the fourth judicial circuit, district of West Virginia.

JOHN E. KNODE
vs.
JACOB WILLIAMSON.

Please to take notice that the depositions of Daniel Anis & others, witnesses, whose testimony is necessary in this cause, and who reside more than one hundred miles from the place of trial, will be examined (de bene esse) on the part of the plaintiff in this cause before me, George Beltzhoover, a commissioner of the United States circuit court, & for said district, at my office in Shepherdstown, Jefferson County, West Va., on the 11th day of Sept., 1869, between the hours of 8 o'clock a. m. and 6 o'clock p. m. of said day, and the taking of the same will be adjourned from day to day until completed, at which time & place you are hereby notified to be present & put interrogatories, if you shall think fit.

Dated Sept. 8th, 1869.

GEORGE M. BELTZHOOVER,
U. S. Com'r for Dist. of West Va.

To JACOB WILLIAMSON.

27 This notice is endorsed as follows:

"Executed the within notice by delivering a true copy of the same to the within-named Jacob Williamson in person this 9th day of September, 1869.

"L. G. ETCHISON."

District court of United States for the fourth judicial circuit, district of West Virginia.

JOHN E. KNODE
vs.
JACOB WILLIAMSON.

Depositions taken before me, Geo. M. Beltzhoover, a commissioner of the United States court for district of West Virginia, at my office in Shepherdstown, West Va., on the 11th day of September, 1869, between the hours of 8 o'clock a. m. and 6 p. m. of said day, to be read as evidence on behalf of John E. Knode in a matter of controversy before the district court of the United States for the 4th judicial circuit, district of West Virginia, depending & undetermined between the said John E. Knode & Jacob Williamson, pursuant to notice
28 served & hereto annexed. Present, plaintiff & counsel, Hon. B. Stanton; defendant & counsel, H. H. Blackburn, esq.

Ehud Turner, a witness of lawful age, b'ing first duly sworn, deposes & says, &c., &c., &c., &c.

Edward W. Dorsey, a witness of lawful age, being first duly sworn, deposes & says, &c., &c., &c.

David Anis, a witness of lawful age, being first duly sworn, deposes & says, &c., &c., &c., &c.

Certain witnesses not yet being examined, and the hour of adjournment for these depositions having arrived, the taking of the same is, pursuant to the notice hereto annexed, adjourned & continued until Monday, the 13th of September, 1869, at the same place & between the same hours.

Given under my hand this 11th day of September, 1869.

GEO. M. BELTZHOOVER,
U. S. Com'r.

Office of Geo. M. Beltzhoover, U. S. com'r, Shepherdstown, West Va., September 13th, 1869, between the hours of 8 a. m. and 6 p. m.

29 Certain witnesses not yet being examined, and the hour of adjournment for these depositions having arrived, the taking of the same is, pursuant to the notice hereto attached, adjourned & continued until to-morrow, at the same place, and between the same hours.

Given under my hand this 13th day of September, 1869.

GEO. M. BELTZHOOVER,
U. S. Com'r.

Office of Geo. M. Beltzhoover, U. S. com'r, Shepherdstown, West Va., Sept. 14th, 1869, between the hours of 8 a. m. and 6 p. m.

Certain witnesses not yet being examined, and the hour of adjournment for these depositions having arrived, the taking of the same is, pursuant to the notice hereto annexed, adjourned and continued until to-morrow, at the same place, and between the same hours.

Given under my hand this 14th day of September, 1869.

GEO. M. BELTZHOOVER,
U. S. Com'r.

Office of Geo. M. Beltzhoover, U. S. com'r, Shepherdstown, West Va., Sept. 15th, 1869, between the hours of 8 a. m. and 6 p. m.

30 Certain witnesses not yet being examined, and the hour of adjournment for these depositions having arrived, the taking of the same is, pursuant to the notice hereto annexed, adjourned and continued until to-morrow, at the same place, and between the same hours.

Given under my hand this 15th day of Sept., 1869.

GEO. M. BELTZHOOVER,
U. S. Com'r.

Office of Geo. M. Beltzhoover, U. S. com'r, Shepherdstown, West Va., Sept. 16th, 1869, between the hours of 8 a. m. & 6 p. m.

Certain witnesses not yet being examined, and the hour for adjourn ment for these depositions having arrived, the taking of the same is pursuant to the notice hereto annexed, adjourned & continued until to morrow, at the same place, and between the same hours.

Given under my hand this 16th day of Sept., 1869.

GEO. M. BELTZHOOVER,
U. S. Com'r.

Office of Geo. M. Beltzhoover, U. S. com'r, Shepherdstown, West Va., Sept. 17th, 1869, between the hours of 8 a. m. and 6 p. m.

31 Certain witnesses not yet being examined, and the hour of adjournment for these depositions having arrived, the taking of the same is, pursuant to the notice hereto annexed, adjourned and continued until to-morrow, at the same place, and between the same hours.

Given under my hand this 17th day of Sept., 1869.

GEO. M. BELTZHOOVER,
U. S. Com'r.

JOSEPH A. CHAPLINE, a witness of lawful age, being first duly sworn, deposes and says:

Ques. What is your age, residence, & occupation?

Ans. My age, thirty-six; residence, Jefferson County; and occupation judge of the sixth judicial circuit.

Ques. Are you acquainted with the parties to this suit?

Ans. I am.

Ques. State whether you had a conversation with Jacob Williamson, about the month of April, 1862, about a canal-boat lying
32 at Harrison's landing, on the Potomac River; and if so, state where it occurred, all that was said, and who was present.

Ans. I had a conversation at & near his house some time during the month of April, 1862. Mr Ehud Turner & myself went to the house of Jacob Williamson on business. I went there to buy wheat, Mr. Turner, to compromise a matter between Mr. Williamson and his (Mr. Turner's) brother-in-law. In a short time after arriving at Mr. Williamson's house he told Mr. Turner & myself that there was a canal-boat lying at Harrison's landing; that the boat belonged to Dan. Reutch & some other rebels, and was almost loaded, ready to leave the landing for the canal or Georgetown. He further said that if the boat remained there longer than that evening that Ham. Hoppending, with the boys, were coming to his Williamson's house, and then they were going down to Harrison's landing for the purpose of cutting the boat loose and sending it over dam No. 4. He frequently spoke of it during the evening, while we were there.

33 Ques. How long after that conversation was it before you heard of the boat having been cut loose?

Ans. It was a very short time afterwards. It may have been the next day afterwards; it may have been two or three days.

Ques. Did you know then, or did you learn afterwards who was meant by Ham. Hoppending?

Ans. I did not know at that time, and then had never heard. I earned afterwards that Ham. Hoppending was an assumed name for Tom Noaks, of Martinsburg.

Ques. What time in the day did you arrive at Mr. Williamson's, and at what time did you leave?

Ans. I think we got to Mr. Williamson's at one or two o'clock in the afternoon. We left Mr. Williamson's when the sun was about an hour or an hour and a half high, so that I might get home before night. At that time marauding bands were roaming round here, and I never
34 remained out after night on this side of the river.

Ques. State whether you ate supper at Mr. Williamson's that evening.

Ans. I did not; was not in his house before or since.

Ques. State whether you took Mr. Williamson aside and had a conversation with him that was not heard by Mr. Turner?

Ans. I did not take him aside. Mr. Williamson invited me to go to his granary to look at his wheat. We went, and Mr. Turner went along. He, Turner, may have stood outside while we were in looking at the wheat, but any conversation that occurred while Turner was not directly present was on the subject of purchasing the wheat.

Ques. Did you buy any wheat from Mr. Williamson on that occasion?

Ans. I did; about from seven to nine hundred bushels.

Ques. State whether upon that occasion you made any proposi-
35 tion to Mr. Williamson to go with him, or to assist in cutting the boat loose?

Ans. I did not, nor never thought of such a thing.

Ques. Did you have any conversation with Mr. Williamson about the suit between him and Knode in the State court?

Ans. I had not; have no recollection of any.

Ques. Did you have any conversation with Tom Noaks about the suit between Knode and Williamson in the State court, while it was pending?

Ans. Tom Noaks came into a store at Lappan's cross-roads, in Maryland, after the suit was brought against Williamson, and asked me why I acted as attorney in the suit of Knode against Williamson; that he had always supposed I was a Union man. I told that I was an attorney, and lived by my profession, and had a right to take any side of a suit I chose. He then became very much excited, & commenced swearing, and told me that I had killed myself politically; that the loyal people of Berkeley County would repudiate me as he did.
36 Discovering at that time that he was under the influence of liquor I told him I did not desire any further conversation with him on the subject, and I left.

JOSEPH A. CHAPLINE.

Certain witnesses not yet being examined, and the hour of adjournment for these depositions having arrived, the taking of the same is, pursuant to the notice hereto annexed, adjourned & continued until Monday next, the 20th day of September, 1869, at the same place and between the same hours.

Given under my hand this 18th of Sept., 1869.

GEO. M. BELTZHOOVER,
U. S. Com'r.

JOHN H. WADE, a witness of lawful age, being first duly sworn, deposes & says, &c., &c., &c.

The defendant, Jacob Williamson, excepts to the reading of the depositions of J. A. Chapline & John H. Wade, because no notice was given of the time & place of the taking of the same, and for other reasons apparent on the face of these depositions.

Sept. 21st, 1869.

H. H. BLACKBURN,
Att'y for Def't.

37 JEFFERSON COUNTY, *to wit:*

I, Geo. M. Beltzhoover, a commissioner of the United States circuit court for the district of West Virginia, do hereby certify that the foregoing depositions were reduced to writing by me, after each witness being first duly sworn to testify the truth, the whole truth, and

nothing but the truth, and were signed by the said Ehud Turner, Edward W. Dorsey, David Anis, Joseph A. Chapline, & John H. Wade, and that the several proceedings therein mentioned were duly had & taken before me at the times & place mentioned therein. And I do further certify that I am not of counsel or attorney for either of the parties to the said suit, nor am I interested in the event thereof.

Witness my hand & seal as commissioner of the United States circuit court for the district of West Virginia, this 20th day of September, 1869.

GEO. M. BELTZHOOVER, *U. S. Com'r.* { U. S. COM'R. SEAL. }

Exception.—On Tuesday morning, Sept. 21st, 1869, Jacob Williamson, by H. H. Blackburn, esq., his att'y, appeared & objected to the commissioner sending the depositions of Joseph A. Chapline & John H. Wade.

Attest:

GEO. M. BELTZHOOVER, *Com'r.*

38 Testimony of George M. Beltzhoover, of Jefferson County, West Va., in a cause pending in the district court of the United States for the district of West Virginia, wherein John E. Knode is plaintiff, & Jacob Williamson is defendant.

Ques. by pl'f's attorney. Did you take the depositions of Joseph A. Chapline & John H. Wade in the above-entitled cause, about the 18th of Sept., A. D. 1869?

Ans. I did. Don't remember the exact day, but it was about that time.

Ques. by same. Please state whether at any time during the taking of the depositions under the notice by virtue of which the aforesaid depositions were taken, there was any agreement or understanding between counsel as to a postponement for the purpose of taking Judge Chapline's deposition?

Ans. The taking of depositions on the 11th of Sept., was adjourned to the 15th, for the purpose of taking the deposition of Judge Jos. H. Chapline. This adjournment was made with the consent of coun-
39 sel on both sides, Mr. Stanton & Mr. Blackburn. The deposition was not taken on that day on account of the illness of Judge Chapline.

Ques. by same. Was Mr. Blackburn aware that it was the intention of the plaintiff to take Judge Chapline's deposition before closing his depositions under that notice?

Ans. I don't know anything about that, except the inference that might be drawn from my former answer, from the intentions & purpose of the adjournment mentioned therein, that it was to take Judge Chapline's deposition, and was with the consent of Mr. Blackburn.

Ques. by same. Did Mr. Blackburn see Judge Chapline's deposition after it was taken & before the depositions were sealed up for transmission to the clerk?

Ans. I did not charge my memory with these facts, but my recollection is that he did, and that I entered an exception on said depo-
40 sition to the same at his request. If so, the depositions of course show the fact.

Ques. by same. Did Mr. Blackburn make any request or express any desire to cross-examine Judge Chapline after his deposition was taken?

Ans. Not that I recollect of; and if he had, I think I would have

granted him the privilege by having Judge Chapline recalled, or have entered the failure to do so upon the depositions taken, as I usually try to get all the facts upon the record of the depositions.

Ques. by same. How far did Judge Chapline reside from your office at the time his deposition was taken, and would you have required him to attend for the purpose of cross-examination if Mr. Blackburn had requested you to do so?

Ans. About a half a mile distant. I would have notified, & endeavored to have had him present, if I had been requested to do so, or his presence had been demanded. No such request was made, to my recollection.

41 Ques. by same. Was Judge Chapline in town after his deposition was taken, & before the depositions were transmitted to the clerk of the court; and if so, was Mr. Blackburn in town at the same time?

Ans. I can't, of course, remember the dates from memory, but an examination of the court records shows that Judge Chapline held court in town on the 21st & 22nd of September, 1869. I don't remember exactly when I did send the depositions off, but my impression is that they had not been sent at that time. I can't say if Mr. Blackburn was here or not at that time.

And further this deponent saith not.

GEO. M. BELTZHOOVER.

Cross-examined by Mr. Faulkner:

Ques. Have you any knowledge of any consent given by Mr. Blackburn, or any other counsel for the defence, beyond the 15th of the month?

Ans. I have not.

42 Ques. Do you know whether Mr. Blackburn was in Shepherdstown up to the period when you had closed the depositions of Chapline & Wade?

Ans. I do not remember exactly when I closed them, so can't answer the question. I remember of Mr. Blackburn going with me to my office after the depositions named had been taken, & examining them, and, I think, requesting me not to seal them, & of my entering that request upon them; but I don't remember positively if they were closed at that time or not.

Ques. Would you regard the depositions as being closed if you had appended your certificate & signature to them?

Ans. I certainly would consider them closed when I put the final certificate to them.

Ques. Had Mr. Blackburn come there before you had made this certificate & signed it, would you not have noted that appearance or objection either in the certificate or in the paper preceding the certificate?

43 Ans. I would enter it, wherever I was, on the record at the time of his appearance.

Ques. How if, upon examining your certificate, it should appear that you had noted his appearance & objection in the margin opposite to your certificate, is not that satisfactory evidence to you that he must have come there after your certificate was made out & signed?

Ans. That would be my impression, if I have not also entered it in the main body of the deposition at the same place on the page where I usually enter them a' the time they occur, and also make a marginal reference by writing the word "exception."

Ques. If your certificate had been made out & signed by you at the time of his coming to the office, would you have felt at liberty, as a commissioner, to have then opened it for the cross-examination of the witness?

Ans. I would not if I had entered my closing certificate, or else
44 adjourned them once finally.

Ques. Does your memory enable to state whether Mr. Blackburn, when he came to your office, asked to have the testimony opened for cross-examination?

Ans. It does not enable to state positively, but I don't think he did.

Ques. If your certificate had then been appended, and the deposition closed, would you have gratified him in such cross-examination if he had asked for it, or felt yourself required as a commissioner to notice his appearance for cross-examination after the testimony was closed?

Ans. I would not. I might have made a note or some memorandum to that effect, if they were still unsealed, but would not have felt under any obligations to have done so.

Re-examination:

Ques. If Mr. Blackburn had requested a cross-examination of Judge Chapline, and counsel for the plaintiff had been still in town, would you have communicated that request to him?

45 Ans. I can't say positively, but I think I would.

Ques. With consent of counsel for the plaintiff and defendant, would you, after your final certificate was written & signed, have opened up the depositions & permitted the cross-examination?

Ans. I am not sure that I would have opened them up, but I certainly would have taken any testimony requested by consent of counsel.

And further this deponent saith not.

GEO. M. BELTZHOOVER.

THE STATE OF WEST VIRGINIA,
Jefferson County, ss:

I hereby certify that the above-named G. M. Beltzhoover was by me first duly sworn according to law, & that the foregoing deposition by him subscribed was taken before me at Euthe's Hotel, in Shepherdstown, Jefferson County, West Va., on the 9th day of November, A. D. 1870, and that said deposition was reduced to writing & signed by the witness in my presence.

In testimony whereof I have hereunto set my hand this 9th day of Nov., A. D. 1870.

E. B. HALL,
Judge 6 Circuit, W. Va.

46 At the request of the plaintiff in the case of John E. Knode vs. Jacob Williamson, I issued a notice to take the depositions of witnesses de bene esse on Saturday, the 11th of September last. The parties, by their counsel, appeared on that day, and the depositions of Ehud Turner, Edward W. Dorsey, David Aus, were taken. The further taking of depositions was adjourned from day to day until the following Wednesday to take the deposition of Judge Joseph A. Chapline; but he being too unwell on that day to have his deposition taken, it was adjourned over until the next day, the judge stating that about 4 o'clock of that day his deposition could be taken. It was not taken on that day. I then, about 4 o'clock of that day, mentioned to Mr. Stanton about the

taking of the deposition. I think it probable Mr. Stanton mentioned the subject to the judge, and the judge said he was too wearied to have his deposition taken that evening. I entered an adjournment
47 then until the next day, (Friday.) I don't remember that anything was said specially about taking the deposition on Friday. I entered an adjournment from Friday until Saturday, when the deposition of Judge Chapline was taken. The adjournment from Saturday, the 11th, to Wednesday, 15th, was with the consent of Mr. Blackburn. The adjournment from Wednesday until Saturday was altogether at the instance of the plaintiff's counsel. The adjournment from 11th until the 15th was for the taking of the deposition of Judge Chapline; & from the 15th to the 18th, there was no other purpose mentioned for the adjournment, but there was a summons served for Thos. Noakes, and one out, not returned, served for Geo. Mix.

Mr. Blackburn was not present when the deposition was taken on Saturday, (the 18th,) nor on the following Monday, (20th.) They requested me to adjourn over until Monday, (20th,) from the 18th, for the purpose of taking the depositions of some other witnesses.

Oct. 1st, 1869.

GEO. M. BELTZHOOVER,
U. S. Com'r.

48 THE STATE OF WEST VA.,
Jefferson County, sc:

Benjamin Stanton, of the city of Wheeling, in the State of West Va., being first duly sworn according to law, says: I took depositions in the case of John E. Knode vs. Jacob Williamson, in the district court of the U. States for the district of West Va., before G. M. Beltzhoover, a commissioner of the circuit court of the U. States for said district, commencing about the 11th of September, A. D. 1869, & closing on the 18th of the same month.

The notice was given with the view of enabling me to avail myself of such leisure intervals as the business of the circuit court of Jefferson County, West Va., (which was then in session,) would afford. Mr. Blackburn appeared & cross-examined such witnesses as were then in attendance up to the evening of the 11 instant. I then stated that I desired to take the deposition of Judge Chapline, but that he was in feeble health, & complained of being too much fatigued with the discharge of his duties in court to have his deposition taken at that
49 time. Mr. Blackburn said he was obliged to be absent two or three days, I think, at the U. States district court at Clarksburg. Judge Chapline had testified in open court on a former trial of the case, and had afterwards sent a voluntary affidavit to the court in answer to the testimony of Williamson, who had been examined as a witness in the cause after Judge Chapline had testified, so that both parties were fully advised as to what his testimony would be. Mr. Blackburn thereupon consented that Judge Chapline's deposition might be taken during his absence, which he supposed would not be beyond the 15th. I do not remember that anything was said about having his deposition open for cross-examination after Mr. Blackburn's return, but as the judge would be at hand, I have no doubt but it was so understood. It turned out, however, that the judge continued so feeble that his deposition could not be taken until after Mr. Blackburn's return.

The depositions were therefore kept open by adjournment from
50 day to day until Saturday, the 18th inst. I find, by reference to the order-book, that the court here was not in session on Satur-

day, the 18th, or Monday, the 20th. On Friday evening, the 17th, Mr. Blackburn & Mr. Faulkner, who were both in attendance on the court here, went to Martinsburg, & did not return until Tuesday, the 21st. I remained here, & on Saturday Judge Chapline expressed his readiness to have his deposition taken. Knowing the precarious condition of his health, I did not feel at liberty to postpone it. I therefore took it on that day. On the morning of the same day, Mr. Wade came to town, and I availed myself of the opportunity to take his deposition also. From what had previously taken place, I supposed Mr. Blackburn did not desire to cross-examine him, and I informed the commissioner that I did not desire to take any further depositions. Whether he closed them, & appended his final certificate on that day, or whether they remained open until Mr. Blackburn's return on Tuesday morning, I do not know. Court remained in session on Tuesday & Wednesday, & on Wednesday Mr. Blackburn, Mr. Faulkner, & myself left Shepherdstown together. I left them at Martinsburg, coming on to Wheeling,
51 on the same night. During the two days that Mr. Blackburn, Mr. Faulkner, & myself were in court here together, and Judge Chapline on the bench, they made no objection to the time or manner of taking Judge Chapline's deposition, nor intimated any desire to cross-examine him, though they did complain loud & long that Wade's deposition was a surprise & fraud upon them. If they had intimated any desire to cross-examine Judge Chapline, I should have assented to it at once, because I knew that he was a witness whose testimony could not be injured by a cross-examination, but would probably be made stronger; and also for the reason that I would not have run any risk as to the exclusion of his deposition, because I was then thoroughly convinced that he was fatally diseased, & might die suddenly at any time. There was not the slightest unfairness or surprise, either in fact or intention, in taking Judge Chapline's deposition.

And further saith not.

B. STANTON.

Sworn to & subscribed before me this 9th day of Nov., 1870.

E. B. HALL,
Judge 6 Cir., W. Va.

52 In the district court U. S. for the dist. West Va., at Wheeling.

JOHN E. KNODE
vs.
JACOB WILLIAMSON.

Statement of H. H. Blackburn, made in support of the objections of the defendant to the reading of the deposition of J. A. Chapline, viz:

I was present at the taking of the depositions of David Anis & others before G. M. Beltzhoover, U. S. com'r, on the 11th day of September, 1869. I was there as the attorney for the defendant. When the depositions taken on that day were closed, Mr. Stanton, attorney for the plaintiff, stated that he desired to take the deposition of J. A. Chapline, but could not do so on that day. I consented that the deposition of Mr. Chapline might be taken on the 15th, or on any day previous thereto, at any time during the intervening days, upon informing me of the time of taking his testimony, as I was in Shepherdstown until the night of the 15th of September, in order to give me an opportunity to cross-ex. the witness. I stated that I had an engagement to

53 be in attendance at the U. S. district court at Clarksburgh & could not be at Shepherdstown after the 15th. About 4 o'clock of the 15th I was at the office of the com'r, Beltzhoover. No witness was present, nor was there any appearance there on behalf of the plaintiff. I left the office in company with the com'r and about one hour & a half thereafter left Shepherdstown & did not return until after dark on the 20th of Sept., and was informed that some depositions had been taken on the "18th," & "20th." Surprised at this I at once went to the office of the commissioner & found it closed. Early next morning I was at the office of the commissioner & saw that in my absence the depositions of Mr. Chapline & Mr. Wade had been taken. I expressed my surprise at this, & told the commissioner that this was a fraud & objected to his sending the depositions of Chapline & Wade. The comm'r had closed the depositions & appended his certificate thereto & was about
54 sealing them up, when, at my request, he endorsed on the margin the objections I made. The office of the com'r was a few steps from the court-house where court was in session, & the hotel where the counsel for the plaintiff, the com'r (Beltzhoover) and myself were stopping was only a few doors from the commissioner's office; and being so near I consented that the plaintiff might take the testimony of Mr. Chapline at any time before the close of the 15th day of the month upon informing me, so that I could cross ex. the witness. I did not consent that depositions should be taken after the 15th; but, on the contrary, I informed the counsel for the plaintiff, and the commissioner that I was compelled to leave Shepherdstown on the night of the 15th of Sep.

H. H. BLACKBURN.

Sworn to in open court this 11th day of May, 1871.

JASPER Y. MOORE,
Clerk D. C. U. S. for D. W. Va.

55 State of West Virginia to any commissioner appointed by the governor of West Virginia for the State of Maine, or any justice or notary public of said State, greeting:

Whereas as it is represented to us, in our circuit court of Berkeley County, by Frank Burr, attorney, that Scott S. Ellis & others, witnesses for Jacob Williamson, in a suit now depending in our said court, wherein John E. Knode is plaintiff & Jacob Williamson is defendant: Now know ye, that we, trusting in your fidelity and provident circumspection, command you that, at such day & place as you shall appoint, you assemble yourselves & the witnesses aforesaid before you, you call & cause to come and then diligently examine on the Holy Evangelists of Almighty God, & their examination into our said court, distinctly & plainly without delay, you send & certify enclosed, under your hands, and seals together with this writ. Witness, E. S. Troxel, clerk of our said court, at the court-house the 4th day of September, 1867.

E. S. TROXEL, *Clk.*
Per BRUDEN, *J. P.*

56 JOHN E. KNODE, PL'FF,
vs.
JACOB WILLIAMSON, DEFT.

To Joseph A. Chapline, attorney of John E. Knode, a non-resident of the State of West Virginia:

Take notice that we shall, on the 12th day of September, at the office of Henry Hudson, in the city of Guilford, State of Maine, between the

hours of 6 a. m. and 4 p. m. of that day, proceed to take the depositions of Scott S. Ellis & others to be read in evidence in my behalf, in a certain action at law depending in circuit court for the county of Berkeley, & State of West Virginia, wherein John E. Knode is plaintiff and I am defendant, and if from any cause the taking of the said depositions be not commenced on that day, or if commenced be not concluded on that day, the taking of the same will be adjourned & continued from day to day, or from time to time at the same place, & between the same hours until the same shall be completed.

Respectfully yours, &c.,

JACOB WILLIAMSON,
By BLACKBURN & HALDMAN,
Atty's for Def't.

Service accepted.

J. A. CHAPLINE,
Att'y for Plaintiff.

57 The deposition of Scott S. Ellis taken before me, Addison Martin, a justice of the peace for the town of Guilford, county of Piscataquis, State of Maine, pursuant to a notice & com. hereto attached, at the office of Henry Hudson, esq., in the town of Guilford, State aforesaid, on the 12th day of September, A. D. 1867, between the hours of 6 a. m. and 4 p. m., to be read as evidence in a certain action at law depending in the circuit court for the county of Berkeley, State of West Virginia, wherein John E. Knode is plaintiff and Jacob Williamson is defendant.

SCOTT S. ELLIS being duly sworn on the Holy Evangelists of Almighty God, deposeth & saith as follows:

1st ques. by def'ts counsel. What is your name & age, & where do you reside?

Ans. My name is Scott S. Ellis. My age is 28 years. I reside in Guilford, county of Piscataquis, & State of Maine.

2 ques. Were you in the military service of the United States
58 in the month of April, 1862; if so, to what regiment & compa'y did you belong, and where were you stationed at that time?

Ans. I was. I belonged to the First Regiment of Maine Cavalry, Co. A. I was stationed at Martinsburg.

Ques. 3rd. State whether you were acquainted with Jacob Williamson of Berkeley County, West Virginia, in April, 1862?

Ans. I was.

4th. ques. State what you know about the cutting loose of a canal-boat called the "Ellen Reutch" from Harrison's landing, on the Potomac River, on the night of the 17th of April, 1862?

Ans. On the night of the 17th of April, 1862, or morning of the 18th, I was within about 30 y'ds of the Ellen Reutch, & saw her turned loose from her moorings at Harrison's landing, on the Potomac River. I was so near the boat that I could identify every person that was near the boat & saw her float from the bank of the river.

59 5th ques. Was Jacob Williamson present at the time said canal-boat was cut loose?

Ans. He was not.

6th ques. How many persons were present when said canal-boat was cut loose, and were the persons present, soldiers or citizens?

Ans. There were only four persons besides myself present. There were three soldiers besides myself & one citizen present.

7th ques. What time of night was the said canal-boat cut loose?

Ans. Between the hours of eleven & three.

8th ques. State all that you know concerning the cutting loose of the said canal-boat?

Ans. Myself & one other member of my company were sent out to intercept a rebel spy. We fell in with two Union cavalry-men & we four met a citizen whom we took with us, for the rebel spy (as we supposed.) As we came to the banks of the Potomac, within about 30 yards
60 of the above-named boat, one of the above-mentioned cavalry-men ordered us to halt, & he with his companion leaving the're horses & the supposed rebel spy with us, went aboard the boat, called 3 men up, sent them across the river, & then turned the above-mentioned canal-boat loose, giving as a reason for so doing that the owners of said boat had misused soldiers. We afterwards identified the citizen as Thomas Noakes of Martinsburg. The above-named persons, were the [* only ones present.]

* Excluded.

And further this deponent saith not.

SCOTT S. ELLIS.

STATE OF MAINE,

Town of Guilford, to wit:

I, Addison Martin, a justice of the peace for the town of Guilford aforesaid, in the State of Maine, do hereby certify that the foregoing deposition was duly taken, sworn to, & subscribed before at the time & place mentioned therein.

61 Given under my hand this 12th day of September, A. D. 1867.

ADDISON MARTIN,
Justice of the Peace.

STATE OF MAINE, *Piscataquis, ss:*

I, Russell Kittredge, clerk of all the judicial courts in said county, certify that Addison Martin, esquire, is & was at the date of his certificate an acting justice of the peace in & for said county, duly commissioned & qualified to act as such, and that the signature to the paper annexed, purporting to be his, is genuine, and that he is duly authorized & empowered by the laws of the State to take depositions, acknowledgements of deeds, assignments, and powers of attorney.

In testimony whereof I have hereunto set my hand & affixed the seal of the supreme judicial court for said State this 11th day of Sep-
62 tember, in the year of our Lord one thousand eight hundred and sixty-seven.

RUSSELL KITTREDGE, *Clerk.*

63 To JACOB WILLIAMSON:

Take notice that, on the 16th day of April, 1870, (Saturday,) at the court-house in Martinsburg, W. Va., between the hours of 8 o'cl'ck a. m. and 8 o'clock p. m., of that day, before me, George M. Beltzhoover, United States commissioner, the depositions of John B. Nadenbush & others, will be taken to be read as evidence in behalf of the plaintiff in a certain action at law depending in the district court of the United States for the district of West Virginia, wherein John E. Knode is plaintiff, and you, Jacob Williamson, are defendant; and if from any cause the taking of the said depositions be not commenced on that day, or if commenced be not concluded on that day, the taking of the same will be adjourned & continued from day to day, or from time to time, at

the same place & between the same hours, until the same shall be completed.

Given under my hand as United States commissioner, this 14th day of April, 1870.

GEO. M. BELTZHOOVER,
U. S. Com'r.

64 Served the within notice by delivering a copy thereof to the defendant, Jacob Williamson, on the 14th day of April, A. D. 1870, at 11 o'clock a. m., of said day.

B. STANTON.

UNITED STATES OF AMERICA,
District of West Virginia:

Personally appeared before me, George M. Beltzhoover, a United States commissioner, B. Stanton, and made oath in due form of law, that the above return of service of the *written* notice is correct & true.

Given under my hand & seal as United States commissioner, this 16th day of April, 1870.

GEO. M. BELTZHOOVER,
U. S. Commissioner.

65 In district court of United States for district of West Virginia, at Wheeling, West Va.

JOHN E. KNODE
vs.
JACOB WILLIAMSON.

Depositions duly taken before me, a commissioner duly appointed under the laws of the United States, to take affidavits and acknowledgements of bail, &c., pursuant to a notice hereto annexed, on the 16th day of April, 1870, between the hours of 8 o'clock a. m., and 8 o'clock p. m., at the court-house in Martinsburg, West Va., to be read as evidence on behalf of the plaintiff, in a certain action at law, depending in the district court of the United States for the district of West Virginia, wherein John E. Knode is plaintiff and Jacob Williamson is defendant.

"G." Present, B. Stanton, esq., of counsel for plaintiff; defendant, and C. J. Faulkner, esq., of counsel for defendant.

WILLIAM N. BIDDLE, a witness of lawful age, being first duly
66 sworn, deposes & says:

Ques. Please state your age, occupation, and residence.

Ans. I am a resident of Martinsburg. My age is 70. My occupation is a hardware merchant.

Ques. State if you are acquainted with Thomas Noakes, of Martinsburg; & if so, how long have you known him?

Ans. I am acquainted with him; have known him I think for about fifteen years.

Ques. Do you know his general reputation for truth & veracity?

Ans. Yes, sir.

(Question & answer objected to by defendant.)

Int. From what you know of his reputation for truth & veracity, would you believe him on oath?

Ans. I would not, sir.

(Question & answer objected to by same.)

And further this deponent saith not.

W'M N. BIDDLE.

(Defendant excepts to the recording of this deposition.)

67 JOHN JAMIESON, a witness of lawful age, being first duly sworn, deposes & says:

"H." Ques. Please state your age, residence, & occupation.

Ans. I am about 45 years of age; reside in Martinsburg, West Va.; and am assistant agent of the Baltimore & Ohio Railroad at this depot.

Ques. Are you acquainted with Thomos Noakes; & if so, how long have you known him?

Ans. I am, sir; have known him about twelve years, or probably more.

Ques. Do you know his reputation for truth & veracity?

Ans. I do. It is very bad.

Ques. From what you know of his reputation for truth & veracity, would you believe him on oath?

Ans. I could not, sir, under any circumstances.

And further this deponent saith not.

JOHN JAMIESON.

68 GEORGE W. RAMER, a witness of lawful age, being first duly sworn, deposes & says:

"I." Ques. Please state your age, residence, & occupation.

Ans. My age is 47. My residence, Martinsburg, West Va.; and my occupation, hotel-keeper & farmer.

Ques. Are you acquainted with Thomas Noakes of Martinsburg, West Va.; & if so, how long have you known him?

Ans. I am; have known him nine or ten years slightly.

Ques. Do you know his reputation for truth & veracity?

Ans. Not personally, sir.

Ques. Do you know how he is generally reputed in the community, as a man of truth & veracity?

Ans. I know his reputation for truth & veracity is not good.

Ques. From what you know of his reputation for truth & veracity, would you believe him on oath?

69 Ans. Well, I hardly know. From general reputation I don't know that I would.

And further this deponent saith not.

GEORGE W. RAMER.

"J." JOHN W. PITZER, a witness of lawful age, being first duly sworn, deposes & says:

Ques. Please state your age, residence, & occupation?

Ans. My age, 45; residence, Martinsburg, West Va.; and my occupation, sheriff of Berkeley County for past five years.

Ques. Are you acquainted with Thomas Noakes, of Martinsburg, West Va.; & if so, how long have you known him?

Ans. I know him; have known him about ten or twelve years.

Ques. Do you know his reputation for truth & veracity?

Ans. I know his reputation for truth & veracity is not very good.

Ques. From what you know of his reputation for truth & veracity would you believe him on oath?

70 Ans. Where he was not interested with any person in any case I would. Where he was interested I would not.

And further this deponent saith not.

J. W. PITZER.

UNITED STATES OF AMERICA,
District of West Virginia:

I, George M. Beltzhoover, a United States commissioner, do hereby certify that the foregoing depositions were reduced to writing by me, & signed by the said W'm N. Riddle, John B. A. Nadenbush, John Blair Hoge, E. S. Troxel, John Jamieson, George W. Ramer, John W. Pitzer, Barnard Dale, & Anthony S. Chambers, and that the several proceedings therein mentioned were duly had & taken before at the times & place mentioned therein. And I do further certify that I am not of counsel or attorney for either of the parties to the said suit, nor am I interested in the event thereof.

Witness my hand & seal as United States commissioner this 16th day of April, 1870.

GEORGE M. BELTZHOOVER, [SEAL.]
U. S. Com.

71 Depositions of John H. Wade, A. K. Syester, Geo. M. Grove, William Jones, Elie Koontz, Dr. Jos. P. Chaney, Thomas Warfield, George H. Colbert, taken before me, John C. Zeller, a commissioner, duly appointed under the laws of the United States, to take affidavits & acknowledgements of bail, &c., on the 18th day of March, 1871, between the hours of ten o'clock a. m. and six o'clock p. m., at my office in Hagerstown, in the county of Washington, and State of Maryland, to be read as evidence on behalf of the plaintiff in a certain action at law depending in the district court of the United States for the district of West Virginia, wherein John E. Knode is plaintiff and Jacob Williamson is defendant. Edward Stake, esq., appeared as counsel for plaintiff, and H. H. Blackburn, esq., appeared as counsel for the defendant.

"K." GEORGE H. COLBERT, one of said witnesses, being carefully examined & cautioned & duly sworn to testify the truth, the whole truth, & nothing but the truth, deposeth & saith as follows:

72 (Examination-in-chief by Mr. Stake to questions agreed upon by counsel for the respective parties, and by consent not written down.)

I know Thomas Noakes, & have known him for twelve or thirteen years. I know his reputation among his neighbors during the above time for truth & veracity. It was, and is, bad. From his reputation among his neighbors for truth & veracity I would not believe him on oath.

Cross-examined by Mr. Blackburn:

I lived in Mr. Noakes' neighborhood in 1856, 1857, & 1858; also in Martinsburg, in 1861; also in Washington County, in my immediate neighborhood, in 1865 & 1866. Can't say that I lived near him since 1866.

And further this deponent saith not.

G. H. COLBERT.

I, J. C. Zeller, a commissioner as aforesaid, do hereby certify that the foregoing depositions were reduced to writing by me, & signed by
73 the said John H. Wade, W'm Jones, & G. H. Colbert, and that the several proceedings therein mentioned were duly had & taken before me at the time & place mentioned therein; and further certify that I am not counsel or attorney for either of the parties to the said

suit; nor am I interested in the event thereof. And I further certify that each & all of the said witnesses live in the county of Washington & State of Maryland, and at a greater distance than 100 miles from the place of trial of said cause.

Witness my hand & seal, as United States commissioner as aforesaid, this 18th day of March, 1871.

J. C. ZELLER, [SEAL.]
U. S. Commissioner.

74 In district court of United States for district of West Virginia, at Wheeling, West Va.

JOHN E. KNODE
vs.
JACOB WILLIAMSON.

Depositions duly taken before me, George M. Beltzhoover, a commissioner, duly appointed under the laws of the United States, to take affidavits & acknowledgements of bail, &c., by consent of parties, by their counsel, this 5th day of May, 1871, at my office in Shepherdstown, W. Va., to be read as evidence on behalf of the plaintiff in a certain action at law depending in the district court of the United States for the district of West Virginia, wherein John E. Knode is plaintiff and Jacob Williamson is defendant. Present, M. T. Ingles, esq., of counsel for plaintiff; defendant, & H. H. Blackburn, esq., of his counsel.

JOHN E. SCHLEY, a witness of lawful age, being first duly sworn, deposes & says:

Question. State your age, residence, & occupation.

75 Ans. In my 53rd year; Jefferson County, W. Va.; a farmer.

Ques. Are you acquainted with Thomas Noakes; if so, how long have you known him?

Ans. Have a very slight personal acquaintance with him, which was commenced in the early part of the war.

Ques. Do you know his reputation for truth & veracity?

(Objected to.)

Ans. Yes; from reputation only.

Ques. State what that reputation is, good or bad?

(Objected to.)

Ans. Not good by any means.

Ques. From that reputation would you believe him on oath?

Ans. I know very little about him personally, but from his general reputation I would not believe him on oath, or any person who bore such a reputation.

Cross examination:

76 Ques. Where has Mr. Noakes resided for the last two years?

Ans. I know nothing of him, except I have seen him about Martinsburg.

Ques. Do you know anything of his reputation for truth among his neighbors for the last three years?

Answer. I do not. And further this deponent saith not.

JNO. E. SCHLEY.

UNITED STATES OF AMERICA,
District of West Virginia:

I, George M. Beltzhoover, a United States commissioner, do hereby certify that the foregoing depositions were reduced to writing by me,

and signed by the said E. J. Lee & John E. Schley at the time & place mentioned therein; and I do further certify that I am not of counsel or attorney for either of the parties to the said suit, nor am I interested in the event thereof.

Witness my hand & seal as United States com'r this 5th day of May 1871.

GEORGE M. BELTZHOOVER, *U. S. Com'r.* { U. S. COM'R. SEAL. }

77 *Motion for new trial.*

JOHN E. KNODE *vs.* JACOB WILLIAMSON. } In trespass.

The plaintiff now comes & moves the court to set aside the verdict & grant him a new trial in this cause, for the following reasons, to wit:

1st. Because the court erred in ruling out and excluding from the jury the deposition of Joseph A. Chapline, esq.

2nd. Because the court erred in ruling out and excluding from the jury the depositions of William N. Riddle, John Jamieson, John W. Pitzer, John E. Schley, George Colbert, and George Ramer.

3rd. Because the verdict was contrary to the law and the evidence.

4th. Because of other errors & irregularities in the trial & proceedings in said cause.

5th. Because the court erred in overruling the plaintiff's objection to the deposition of Scott S. Ellis & permitting the defendant to offer the same in evidence to the jury.

STANTON & ALLISON.

MAY 23RD, 1871.

78 UNITED STATES OF AMERICA,
District of West Virginia, ss:

I, Jasper Y. Moore, clerk of the district court of the United States for the district of West Virginia, do hereby certify that the writings annexed to this certificate are true copies of their respective originals on file and remaining of record in my office in the cause within mentioned.

In testimony whereof I have caused the seal of the said court to be hereunto affixed at the city of Wheeling, in the district of West Virginia, this 20th day of October, 1871, and of the independence of the United States the 96th.

[SEAL.] JASPER Y. MOORE,
Clerk D. C. U. S., D. W. Va.

Fee $15.40; paid by B. Stanton, esq'r.

79 (Indorsed:) Nov. 4, 1871. Writ of error allowed Bond in $200.00.

S. P. CHASE, *Ch. Jus.*

(Indorsement on cover:) No. 487. John E. Knode, plaintiff in error, vs. Jacob Williamson. West Virginia D. C. U. S. Fled 6th December, 1871.

Supreme Court of the United States.

OCTOBER TERM, 1873.—No. 48.

JOHN E. KNODE
vs.
JACOB WILLIAMSON.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

Brief for C. W. B. Allison for Plaintiff in Error.

Supreme Court of the United States.

OCTOBER TERM, 1873.—No. 48.

JOHN E. KNODE
vs.
JACOB WILLIAMSON.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

Brief for C. W. B. Allison for Plaintiff in Error.

ABSTRACT OF CASE.—QUESTIONS INVOLVED, AND MANNER IN WHICH THEY ARE RAISED.

The action below was in trespass, brought by the plaintiff in error, John E. Knode, September 27, 1867, against the defendant in error, Jacob Williamson, to recover $10,000 damages. The declaration was filed at November rules, 1867, and alleges that the plaintiff, a citizen of Maryland, on the 17th of April, 1862, was the owner and in possession of the canal boat Ellen Rentch, then in the Potomac river, at Harrison's Landing, Berkeley County, Va., (now West Virginia,) and her cargo of wheat, flour, corn and oats; that the boat and furniture were of the value of $2,000, and the cargo was of the value of $7,650, and that the defendant, with force and arms, then and there cut the boat loose, and caused it to float down the river and over canal dam No. 4, whereby the boat and cargo were wrecked and destroyed and wholly lost to the plaintiff. The defendant, after inef-

fectually interposing a demurrer, plead the general issue, "not guilty," upon which issue the case was tried before a jury at the January term, 1869, and the jury failing to agree upon a verdict they were discharged and the case continued.

In May, 1871, another jury was empannelled and the case again tried, when a verdict was rendered in favor of the defendant. The plaintiff at the same term moved for a new trial, which motion was overruled, and final judgment was rendered in favor of the defendant. [See pages 5, 6 and 24.]

During the progress of the last trial various exceptions were taken by the plaintiff to the action of the Court in ruling out evidence offered by the plaintiff, and in permitting evidence upon the part of the defendant, which was objected to by the defendant, which are shown by the bill of exceptions. [See pages 6 to 23.]

The first exception taken by the plaintiff was to the ruling of the Court in excluding the deposition of Judge Joseph A. Chapline, [see pages 8 to 11,] which was taken September 18, 1869, and the witness died in September, 1870, some eight months before the trial and ruling of the Court.

The deposition was important to the plaintiff. The witness, at the time it was taken, resided more than one hundred miles from the place of trial, and was also infirm. The deposition was taken under a notice of the United States Commissioner taking it, duly served upon the defendant; that the depositions of Daniel Anis and other witnesses would be taken *de bene esse*, by the plaintiff, at the place where taken, on the 11th of September, 1869, and the taking of the same would be adjourned from day to day until completed. Both parties and their counsel were present at the time and place mentioned in the notice, when, without objection upon the part of the defendant, the depositions of, first, Ehud Turner; second, E. W. Dorsey, and third, David Ains, were taken by the plaintiff. The certificate of the officer then states that "certain witnesses not yet being examined, and the hour of adjournment for these depositions

having arrived, the taking of the same is pursuant to the notice hereto annexed—adjourned and continued until Monday, the 13th of September, 1869, at the same place and between the same hours. Similar adjournments were regularly made and certified from day to day by the officer until the 18th of that month, by reason of the ill-health of the witness, Chapline, when the deposition of Chapline was taken, the defendant not being present. Another adjournment was then made until the next legal day, Monday, the 10th, when the deposition of another witness, John H. Wade, was taken. On the 21st, after the certificate of the officer had *probably* been written out, but the depositions not yet sealed up, the defendant's attorney appeared before the officer in the absence, and without the knowledge of the plaintiff or his attorney, who was then in the town, and without asking the privilege of a cross-examination of the witness, who was close by, objected to the commissioner's sending the depositions of Chapline and Wade. [See the officer's memo., p. 12.] At the same time and place the defendant's attorney wrote upon the depositions above the officer's certificate as follows: "The defendant, Jacob Williamson, excepts to the reading of the depositions of J. A. Chapline and John H. Wade, because no notice was given of the time and place of the taking the same, and for other reasons apparent on the face of these depositions—September 21, 1869, (signed.)" The depositions were then sealed up and transmitted by the officer.

At the time Judge Chapline's deposition was excluded, the court had before it the sworn testimony of the officer, and also of Mr. Stanton, the attorney of the plaintiff, and of Mr. Blackburn, the attorney for the defendant. [See pages 12 to 17.] The testimony of those persons clearly shows that it was understood, and in fact agreed to by defendant, that Judge Chapline's deposition would be taken under that notice, and the adjournments, up to the 15th, at least, were agreed to by the defendant, and were for the purpose of getting Chapline's deposition, who was known to be in bad

health by all the parties. The character of the testimony, which would probably be brought out by the deposition of Judge Chapline, was also known to the parties. [See Mr. Stanton's affidavit.] The deposition was excluded because the witness' name was not given in the notice, and the waiver or consent of the defendant that the deposition might be taken, did not have any effect after the 15th of September, 1869.

The second exception of the plaintiff was to the ruling of the Court permitting the defendant to give in evidence the deposition of Scott F. Ellis. [See printed record, pp. 18 and 19.] That deposition had been taken by the defendant in the absence of the plaintiff, though upon notice to him, in a case which the plaintiff had previously brought in a State court, and which he voluntarily dismissed before the time for a hearing, and shortly after the deposition was taken and filed. The parties and the cause of action were the same, but the deposition had never been used in or acted upon by the State Court, and the witness was still living. The defendant had endeavored to ascertain the whereabouts of Ellis, in order to re-take his deposition in this case, but failed, the witness being out of the district of West Virginia. The plaintiff objected to the deposition, because, first, the witness was still living and his deposition could yet be obtained in this suit; second, the deposition was not taken in this suit nor in accordance with the laws of Congress; third, the same was not taken in accordance with the laws of West Virginia; 4th, it did not sufficiently appear to have been taken at the place mentioned in the notice.

Several exceptions were next taken by the plaintiff to the several rulings of the court excluding the depositions of Wm. N. Biddle, John Jamieson, John W. Pitzer, George Raymer, John E. Schley, and George Colbert, (witnesses residing more than one hundred miles from the place of trial,) which had been taken by the plaintiff and were offered in evidence by him for the purpose of impeaching the character of Thos. Noakes for truth and veracity, a witness called and exam-

ined by the defendant, and who gave material and important evidence for the defendant. [See page 7.] These depositions are made part of the bill of exceptions, and respectively marked E, H, I, J, K and L. [See pages 20 to 23.] They were objected to and excluded because of incompetency, the court below ruling that the respective questions and answers were not in the proper and necessary form to be given in evidence to the jury for the purpose of impeaching the character of said witness, Noakes.

The depositions of Biddle, Jamieson, Ramer, and Pitzer were taken upon notice before a United States Commissioner in Martinsburg, West Virginia, (the then residence of said Noakes.) and in the presence of the defendant and his counsel, (in April, 1870.)

The questions to and answers of the first witness, Biddle, were as follows: [See page 20.]

1. Question. Please state your age, occupation and residence.

Answer. I am a resident of Martinsburg. Age, 70. Hardware merchant.

2. Question. State if you are acquainted with Thomas Noakes, of Martinsburg; and, if so, how long have you known him?

Answer. I am acquainted with him. Have known him, I think, about fifteen years.

3. Question. Do you know his general reputation for truth and veracity?

Answer. Yes, sir. (Question and answer objected to by defendant.)

4. Question. From what you know of his reputation for truth and veracity would you believe him on oath?

Answer. I would not, sir. (Question and answer objected to by same.)

In the deposition of Jamieson [see page 21] the first two questions are the same as in Biddle's deposition, and the

answers thereto substantially the same. The third question is the same, except the word "general" is omitted. The answer was, "I do. It is very bad." The fourth question is the same as in Biddle's, to which the witness answered: "I could not, sir, under any circumstances."

In the deposition of Ramer, the first, second and third questions are the same as in Jamieson's. [See page 21.] The answer to the second question was: "I am; have known him nine or ten years, slightly." The answer to the third question was, "Not personally, sir." A question was then asked in this form; "Do you know how he is generally reputed in the community as a man of truth and veracity?"

Answer. "I know his reputation for truth and veracity is not good."

To the fourth question (as to Biddle) the witness, Ramer, answered: "Well, I hardly know. From *general* reputation I don't know that I would."

In the deposition of Pitzer the questions and answers are substantially as in Jamieson's, except the last answer was: "Where he was not interested with any person in any case, I would. Where he was interested, I would not."

At the time the three last named depositions were taken no objections were interposed by the defendant to the form of the questions and answers, or to the depositions, as he had done when Biddle's deposition was taken.

The deposition of Colbert was taken by the plaintiff in March, 1871, before a United States Commissioner, in Hagerstown, Maryland, both parties present, by their counsel, the witness being cross-examined. The questions put to this witness were agreed upon by the counsel for the respective parties, and by consent not written down; and the only question raised upon that deposition is, whether the answers of the witness were competent to go to the jury as impeaching evidence. The witness testified in chief: "I know Thomas Noakes, and have known him for twelve or thirteen

years. I know his reputation among his neighbors during the above time for truth and veracity. It was, and is, bad. From his reputation among his neighbors for truth and veracity I would not believe him on oath." Upon cross-examination the witness further stated: "I lived in Mr. Noakes' neighborhood in 1866–'7 and '8; also in Martinsburg in 1861; also in Washington county, in my immediate neighborhood, in 1865 and 1866. Can't say that I lived near him since 1866." [See page 22.]

The deposition of John E. Schley was taken May 5, 1871, before a United States commissioner at Shepherdstown, West Virginia. The defendant and his attorney were present and cross-examined the witness. [See page 23.] The questions-in-chief are substantially the same put to Jamieson. The witness answered that he was a farmer fifty-three years old, residing in Jefferson county, West Va.; that he had a very slight personal acquaintance with Noakes, which was commenced in the early part of the war; that he knew his reputation for truth and veracity, and that it was "not good by any means." To the last question he answered, "I know very little about him personally, but from his general reputation I would not believe him on oath, or any person who bore such a reputation." The following additional appears upon cross-examination:

Question. Where has Mr. Noakes resided for the last two years?

Answer. I know nothing of him, except I have seen him about Martinsburg.

Question. Do you know anything of his reputation for truth among his neighbors for the last three years?

Answer. I do not.

The third question, as put to Jamieson, was alone objected to by the defendant at the time the deposition was taken.

The motion for a new trial was upon the ground of the alleged errors of the court shown in the bill of exceptions,

and because the verdict was against the law and the evi dence. [See page 24.]

ASSIGNMENT OF ERRORS RELIED UPON.

First. The Court erred in ruling out and excluding from the jury the deposition of the Hon. Joseph A. Chapline, as shown by the plaintiff's bill of exceptions and in the foregoing abstract and statement.

Second. The Court erred in overruling the plaintiff's objection to the deposition of Scott S. Ellis, and in permitting the same to be read in evidence to the jury, as shown by the bill of exceptions, and the foregoing abstract and statement.

Third. The Court erred in each of its respective rulings sustaining the several objections of the defendant to the depositions and testimony of William N. Biddle, John Jamieson, Geo. W. Ramer, John W. Pitzer, George Colbert, and John E. Schley, and in refusing to permit each of said depositions to be read in evidence to the jury, as shown by the bill of exceptions and the foregoing abstract and statement.

Fourth. The Court erred in refusing to set aside the verdict and to grant the plaintiff a new trial for the reasons set forth in the plaintiff's motion for a new trial, and in his bill of exceptions. [See page 24.]

BRIEF FOR PLAINTIFF IN ERROR.

As to the first error assigned—

Judge Chapline's deposition was relevant and important to the plaintiff, and was legally taken in the cause. The defendant was duly notified by the officer that the depositions of Daniel Anis and others would be taken at that place on the 11th of September, and that the taking of the same would be adjourned from day to day until completed. The notice was in accordance with the usual practice, and

the law at that time did not require that the names of all of the witnesses should be inserted in the notice (which has since been required by the act of Congress of May 9, 1872.) The defendant responded to the notice by appearing at the time and place, when several depositions were taken under the notice, which occupied the day until the hour for adjournment arrived, at which time "certain witnesses, not yet being examined," the taking of the depositions was "pursuant to the notice," regularly adjourned from day to day until the 18th, when Chapline's deposition was taken. It was the privilege and duty of the defendant to attend from time to time until the depositions were closed, if he desired to cross-examine all the witnesses. That he did not do so was his own fault and not that of the plaintiff. He, in fact, knew that the adjournments were for the purpose of taking Chapline's deposition, who was in bad health, and assented thereto confessedly up to the 15th of the month, at least. He made no objections at any time until after the depositions were all taken and closed, and then without asking permission to cross-examine, which privilege would have been conceded to him, though he had no right to demand it. The subsequent death of the witness made the rejection of the deposition peculiarly injurious to the plaintiff, as a very important part of it could not be supplied.

But if the law required the names of all the witnesses whose depositions were to be taken, to be inserted in the notice, the requirement could be waived by the defendant, and was waived by him, by permitting the depositions of others without objections, and particularly by his assenting that the deposition of Chapline might be taken under the notice. That he gave no assent that it should be taken after the 15th, if such be a fact, is not important. The taking of his deposition had been with his assent regularly adjourned by the officer until the 15th, and the sickness of the witness was a good reason for a further adjournment by the officer:

As to the waiver, I cite—

Shutte vs. Thompson, 15 Wall, 151.
Buddicam vs. Kirk, 3 Cranch, 293.
Rich vs. Lambert, 12 How., 354.
See also Vattier vs. Hinde, 7 Pet., 252.
Edmonson vs. Barrell, 2 Cranch, C. Ct., 228.

As to the second error assigned—

The deposition of Scott S. Ellis was confessedly not taken in accordance with the act of Congress. It was not taken in that case, though in a former case between the same parties about the same subject matter in a State Court. The witness was not dead, and though he was not within the district of West Virginia, it was not claimed that he was beyond the United States. The plaintiff was not present when it was taken. It had never been used in or recognized by the State Court as a legal deposition. The notice to the plaintiff stated the deposition would be taken in the city of Guilford, State of Maine. The deposition purports to have been taken before a justice of the peace for the town of Guilford, county of Piscataquis, State of Maine, and "in the *town* of Guilford, State aforesaid." In the State of Maine towns are *townships*. It was not shown that the township of Guilford, Piscataquis county, and the "city of Guilford," in the State of Maine, are territorially the same, either wholly or in part. I submit that neither the District Court of West Virginia nor the State Court of that State could judicially know that the deposition had been taken in the "city of Guilford," the place mentioned in the notice. There was no evidence before the Court as to the official character of the officer claiming to be a justice of the peace, in the State of Maine. Under the "Code" of West Virginia, I admit that no other evidence is required than the certificate of the magistrate; but that law could only apply when the deposition was offered in evidence in the State Court. But instead of being offered in the State Court it was offered in the United States Court below, which, I think, should have required further proof as to the official character of the officer.

In Virginia and West Virginia, (which adopted the laws of the former as they existed, on the 20th of June, 1863, when the State was admitted,) whilst it has been held that "if a witness who has been examined on a *former trial* between the same parties, and on the same issue, is since dead; what he swore to on the *former trial* may be given in evidence;" yet it has been further held that "this rule does not extend to the admission of evidence formerly given by a witness *who has removed beyond* the jurisdiction of the country, [court?] and much less can it be admitted in a criminal case."

Finn vs. Commonwealth, 5 Rand., 708.
See also, Wilber vs. Selden, 6 Cowen., 162.
Crary vs. Sprague, 12 Wend., 41.
Weeks vs. Lawerre, 8 Barb., 530.
Le Baron vs. Crombie, 14 Mass., 234.

I am aware that there is a conflict upon this question in the decisions in different States, but as this case comes from West Virginia, I think the rule of evidence should be the same in the courts of the United States, as in the State Court, and that the deposition of Ellis should have been ruled out.

As to the third error assigned—

The questions arising under the several rulings of the Court rejecting the testimony of the six impeaching witnesses, as shown in their depositions, being similar, although the questions and answers are slightly variant, it was deemed preferable to group them together under one assignment, to save time and space in the brief and argument. The simple question arising under each of the depositions, is, what is the necessary form, if any, for the questions to be put to, and the answers to be made by a witness, to render his evidence competent to go to the jury to impeach the character of an adversary witness, and were the questions and answers of the several witnesses, as given in their respective depositions, sufficient for such purpose? Is it necessary that an

impeaching witness shall say that he has the means of knowing the general character, or general reputation of the adversary witness for truth and veracity, among his immediate neighbors, or in the neighborhood in which he resides, and at the time the adversary witness gave his testimony? Such, I understood, was the requirement of the court below, and the case of Tease vs. Huntingdon, 23 How., p. 2, was quoted by the Court as authority for rejecting the several depositions. Other authorities may be cited, holding that testimony in that form is proper. But it is submitted that it is not the only, or a necessary form. [See 4th Cush., 107.] When Biddle, the first witness, testified that he is a merchant, seventy years old, residing in Martinsburg, (the residence of Thomas Noakes, the witness sought to be impeached,) that he is acquainted with Noakes; that he has known him for fifteen years; that he knows his general reputation for truth and veracity, it was a sufficient foundation at least *in chief*, for the witness to state either that his character or reputation was good or bad, or that, from what he knew of his reputation for truth and veracity, he would, or would not, believe him under oath, or he might state both.

If the defendant was not satisfied that the witness had the means of knowing the character, he should have endeavored to show by cross-examination that the witness was mistaken when he said that he knew Noakes' general reputation for truth and veracity. This he failed to do.

So when Jamison stated that he was a resident, and doing business in Martinsburg; that he was acquainted with Noakes, and had been for twelve or more years; that he he knew his reputation for truth and veracity; that it was very bad; and, from what he knew of that reputation, he could not believe him on oath under any circumstances, I think it was proper evidence to go to the jury. That the word "general" is omitted before the word reputation, I think cannot effect the meaning of the witness. If the question had been, "Do you know his *character*," instead of

reputation, it might be said that the witness misunderstood the legal meaning, and referred to his personal knowledge or opinion of the witness, instead of the opinion in the community; but the word "reputation" necessarily refers to the opinion in the community. But, if the witness misunderstood either term used, it could, and I think should, have been shown by a cross-examination.

"Character, is a term convertible with common report. Character and reputation are the same."

3 Ser and Rawle, 337, 338.

"General character, is the estimation in which a person is held in the community where he has resided."

2 Wend., 354.

1 Phillips on Evidence, 764, Note 204, (Cowan & Hill.)

See also Note 598, 2 Phillips on Evidence, 956.

I think it is evident that each and all of the witnesses referred to the general character of Noakes amongst his neighbors and acquaintances. The witness, Ramer, seemed at first to misunderstand the effect of the question as to the reputation, when he answered, "Not personally." But when asked the question, "Do you know how he is generally reputed in the community, as a man of truth and veracity?" he answered, "I know his reputation for truth and veracity is not good." This, I think, obviated any objections which otherwise might have been raised to the testimony of this witness. It was said in the court below that the deposition did not show that the witness alluded to the community in which Noakes resided; but I think it sufficiently appears from the facts that Ramer and Noakes resided in the same village, and where the deposition was taken.

The deposition of Colbert is less objectionable than the others. The objections which were made, as I now remember, were that the witness did not say in words that he had the means of knowing the general character or general reputation of Noakes, and that he had not resided *near* Noakes since 1866, as stated on cross-examination. I think it sufficiently appears that the witness had the means of knowing

the general character for truth and veracity of Noakes; that he alluded to that general character among his neighbors at present, as well as in the past, for he said, "it was, and is, bad."

It certainly is not required that an impeaching witness must have resided near the person of whom he testifies during all the period of which he speaks, or at the time he is called upon to testify.

The testimony of J. E. Schley differs from the others, because it appears from a cross-examination; that the witness knew nothing of Noakes' reputation among his neighbors for the last three years, and that his evidence in chief should be confined to a time anterior to three years.

I think three years not so remote as to have justified the rejection of the evidence. This court held in the case, in 23 How. 2, that five years was so remote as to give a discretion to the court below, to either admit or reject the evidence; but it seems to me that three years is an improper limit in any case to such testimony. In the case of Teese *vs.* Huntingdon, last cited, "witness was asked what was the reputation of the first witness for truth and veracity." That was as objectionable as in any of the depositions rejected by the court below in this case. This court, however, in that case did not deem the question objectionable, but seem to have taken it for granted that that form of question was proper; but the testimony was rejected because the witness answered "that he had no means of knowing, not having had any transactions with him for five years."

I will close by citing the court to a few additional authorities:

"Are you acquainted with Capt. Bogars' general reputation for truth and veracity—if so, what is it." Held to be proper.

French *vs.* Millard, 2 Ohio. S. R. 49.

"Have you the means of knowing the reputation for truth," or, "Are you acquainted with A. B., and do you know his general reputation for truth?" Held proper.

Craig vs. the State, 5 Ohio S. R., 607.

"The proper question in such case is, we think, 'From your knowledge of the general character of the witness, do you believe he is entitled to credit when upon oath as a witness?'"

Mobley vs. Hamit, 1 A. K. Marshall, 591.

"The questions proper to be asked a witness have in several cases been held to be—1st, 'Do you know the general character of the witness attempted to be impeached, and if you do, what is his general character for truth and veracity?'"

Wharton's Am. Crim. Law, sec. 814.
See also U. S. vs. Vansickle, 2 McLean, 225.
Blue vs. Kirby, 1 T. B. Monroe, 195.
1 Greenleaf on Ev., sec. 461.
And see Bates vs. Barber, 4 Cush., 107.

"When the examination is to general credit, the course in England is, to ask the witnesses whether they would believe the party sought to be discredited on oath. With us the more usual course is to discredit the party by an enquiry, what his general reputation for truth is, whether it is good or whether it is bad."

Goss vs. Stinson, 2 Sumner, 606.

"The only proper question as to the character of a witness is, are you acquainted with the general reputation of the witness as to veracity? And from the knowledge of that reputation, would you believe him on oath?"

U. S. vs. White, 5 Cranch C. Ct., 39, 42.
Patriotic B'k vs. Coote, 3 Cranch C. Ct., 169.

"The question of a witness's reputation for truth and veracity is one of fact to be tried by the jury; and it is not competent for the court to institute or allow a preliminary examination of the impeaching witnesses as to their knowledge and means of knowledge of the reputation of the witness sought to be impeached, and, thereupon, to receive or reject their testimony, according as the court are satis-

fied, or not, that the witnesses have the requisite knowledge to enable them to testify to the fact in question."

Bates vs. Barber, 4 Cush., 107.

As to the fourth error assigned:

The motion for a new trial having been based upon the alleged errors of the court referred to in the other errors assigned, it is unnecessary to make any further statement under this assignment.

Respectfully submitted.

C. W. B. ALLISON,
Attorney for Plaintiff in error.

Supreme Court of the United States.

OCTOBER TERM, 1873.

JOHN E. KNODE, Plaintiff in Error,
v.
JACOB WILLIAMSON, Defendant in Error. } No.

BRIEF OF DEFENDANT IN ERROR.

1st exception. The exclusion of the deposition of Joseph A. Chapline.

It is clear the deposition of this witness was taken without notice. The affidavit of H. H. Blackburn, at page 17 of the Transcript, states that on the 11th of September he, as counsel for the defendant, Williamson, consented that Chapline might be examined on the 15th of September, or any day previous thereto; and that Chapline was examined on the 18th, in the absence of Mr. Blackburn and without notice to him. This statement is not denied. (See affidavit of B. Stanton, Esq., plaintiff's counsel, Transcript, p. 16.)

It is evident, from this state of facts, that Chapline's deposition was properly excluded.

2. As to the admission of the deposition of Scott S. Ellis.

The deposition of Ellis had been taken in a cause pending in the State Court for Berkeley county, West Virginia, between the same parties, involving the same subject-matter as the present suit, which suit the plaintiff had dismissed.

The defendant, Williamson, it is stated in the exception,

"had made unusual efforts to ascertain the whereabouts of Ellis, in order that his deposition might be taken in this cause, and having failed therein, not being a resident of this district, (the judicial district of the State of West Virginia,) his deposition was read."

It is submitted the ruling of the court was proper in admitting this deposition.

Ellis was beyond the State of West Virginia, in the State of Maine. His deposition had been regularly taken in the former case between the present plaintiff and defendant.

It appears that the defendant did everything in his power to examine Ellis anew, but in vain.

What a deceased witness swore on a former trial between the same parties may be given in evidence. (Phillips on Evidence, sec. 200.

The testimony of a deceased witness, before commissioners vested with certain judicial powers, where he might have been cross-examined, was held admissible.

Jackson *v.* Bailey, 2 John. R. 17.

Where a party had procured a witness to go away, evidence given by him before the grand jury was admitted.

Rex *v.* Barber, 1 Root, 76.

One great rule of evidence is, that the best evidence must be produced which the nature of the case admits. Certainly the deposition of Ellis is the best evidence possible under the circumstances.

If a judgment had been rendered in the former case in the State court, it would be admissible as evidence in this case. Why then should not a deposition taken in that case be admissible in this case, when it was impossible to do more? It was by the action of the present plaintiff, in dismissing his former suit, perhaps for this very purpose, that occasion arises for objection to the deposition of Ellis.

2d exception. Exclusion of depositions of Riddle, Jamieson, Pitzer, Raymar, Schley, and Colbert.

The depositions of these witnesses were taken to impeach the credit of Thomas Noaks. They were asked "if they knew his general reputation for truth and veracity." The proper inquiry should have been as "to his general character," &c.

The depositions were properly excluded.

C. J. FAULKNER,
W. W. BOYCE,
Counsel for Deft.